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Message Text

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ACTION EB-08

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COME-00 INT-05 GSA-02 IO-13 L-03 CIAE-00 INR-07
NSAE-00 OES-06 TRSE-00 OMB-01 PM-04 NSC-05 SP-02
SS-15 SSO-00 NSCE-00 INRE-00 /115 W
----------091823Z 112375 /50
O 091544Z FEB 77
FM AMEMBASSY LONDON
TO SECSTATE WASHDC IMMEDIATE 454
INFO USMISSION GENEVA IMMEDIATE
AMEMBASSY BANGKOK PRIORITY
AMEMBASSY CANBERRA PRIORITY
AMEMBASSY JAKARTA PRIORITY
AMEMBASSY KINSHASA PRIORITY
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FOR: PLEASE PASS TO ASHLEY HEWITT AT USMISSION GENEVA

E.O. 11652: NA
TAGS: EMIN
SUBJ: TIM -- ITC WORKING PARTY ON BOLIVIA

1. SUMMARY: THE ITC'S WORKING PARTY ON BOLIVIA'S NON-RATIFICATION OF THE FIFTH ITA MET FEBRUARY 7-8 TO CONSIDER A REPORT BY THE UN LEGAL OFFICE ON MEANS BY WHICH THE AGREEMENT'S PROVISIONAL STATUS COULD BE EXTENDED AND TO CONSIDER OTHER POSSIBLE APPROACHES TO THE BOLIVIAN PROBLEM INCLUDING A BOLIVIAN PROPOSAL FOR THE AUTOMATIC
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INDEXATION OF ADJUSTMENTS TO THE ITC FLOOR AND CEILING PRICE RANGE. THE WP WAS UNABLE TO AGREE ON ANY RECOMMENDATIONS TO BE MADE TO THE COUNCIL, BUT DID AGREE TO MEET AGAIN ON FEBRUARY 28 IN PREPARATION FOR THE MARCH COUNCIL MEETING.

2. THE WORKING PARTY MEETING OPENED WITH SUBMISSION OF

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AN INFORMAL LEGAL OPINION BY THE UN LEGAL OFFICE (CAULFIELD). ACCORDING TO THAT OPINION, THE FIFTH ITA WILL DEFINITIVELY EXPIRE ON JUNE 30, 1977 UNLESS BOLIVIA RATIFIES THE AGREEMENT OR UNLESS THE COUNCIL EXTENDS THE AGREEMENT'S PROVISIONAL STATUS EITHER BY AMENDMENT UNDER ARTICLE 55 OR BY RESOLUTION UNDER ARTICLE 57(B) OF THE AGREEMENT. THE LEGAL OFFICE BELIEVES THE AMENDMENT PROCESS IS UNWORKABLE SINCE IT WOULD BE EXTREMELY DIFFICULT TO OBTAIN THE REQUIRED RATIFICATION BY JUNE 30. REGARDING ARTICLE 57(B), COULFIELD SAID THAT IF THE COUNCIL DECIDED TO USE 57(B) TO EXTEND THE PROVISIONAL STATUS OF THE AGREEMENT FOR ONE YEAR, "IN THE VIEW OF THE LEGAL OFFICE OF THE UNITED NATIONS, THERE WOULD BE NO LEGAL OBJECTIONS WERE THE COUNCIL TO SO ACT UNDER ARTICLE 57(B)". COULFIELD ADMITTED THAT IT WAS ARGUABLE THAT THIS HAD BEEN ARTICLE 57(B)'S ORIGINAL INTENT. IN RESPONSE TO A QUESTION, HE AGREED THAT IN ANY CASE ARTICLE 57(B) WOULD BE A ONE-SHOT PROVISION, I.E. IF USED TO EXTEND THE PROVISIONAL STATUS OF THE AGREEMENT, IT COULD NOT BE USED SUBSEQUENTLY TO EXTEND THE AGREEMENT ONCE DEFINITIVELY IN FORCE.

3. ITC EXECUTIVE CHAIRMAN LAI CLEARLY FAVORS A 57(B) RESOLUTION AND PRESSED THE WORKING PARTY TO RECOMMEND TO THE COUNCIL AT THE MARCH MEETING THAT IT ADOPT A RESOLUTION WHEREBY THE AGREEMENT AUTOMATICALLY WOULD BE EXTENDED FOR ONE YEAR ON JUNE 30 IF BOLIVIA HAS NOT RATIFIED BY THAT DATE. CONSUMERS WERE NOT PREPARED TO SUPPORT THE LAI PROPOSAL BECAUSE A NUMBER OF DELEGATIONS, LIMITED OFFICIAL USE

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INCLUDING THE U.S., BELIEVE THAT:

A) THERE ARE SUFFICIENT UNRESOLVED RESERVATIONS CONCERNING THE USE OF 57(B) AS TO CAST DOUBTS ON ITS LEGALITY;

B) AN EXTENSION OF THE AGREEMENT COULD SIMPLY PROVIDE BOLIVIA WITH AN EXTENDED PERIOD FOR APPLYING PRESSURE ON CONSUMERS FOR CONCESSIONS IN EXCHANGE FOR THEIR RATIFICATION (FRANCE, JAPAN AND HUNGARY SEEMED PARTICULARLY CONCERNED WITH THIS POINT);

C) A DECISION AT THIS TIME ON A WORKING PARTY RECOMMENDATION TO THE COUNCIL COULD LESSEN THE IMPACT AND THE EFFECTIVENESS OF THE MALAYSIAN MISSION.

4. SOME CONSUMERS, FRANCE SUPPORTED BY BELGIUM AND THE NETHERLANDS, FELT THAT THE AGREEMENT COULD BE EXTENDED BY A PROTOCOL AMENDING THE AGREEMENT TO REQUIRE PARTICIPATION BY ONLY FIVE PRODUCERS, BUT EVEN THESE DELE-

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GATIONS BELIEVED THAT A DECISION NEED NOT BE MADE AT THIS TIME. ON PRODUCER SIDE, BOLIVIA REPORTEDLY OBJECTED WITHIN CAUCUS TO THE USE OF 57(B).

5. AFTER CONSULTING WITH OTHER PRODUCERS, BOLIVIA MADE A DETAILED PRESENTATION OF ITS PROPOSAL FOR RESOLVING THE CURRENT CRISIS BY A "SOLUTION" TO THE PRICE RANGE PROBLEM WITHIN THE ITC. ACCORDING TO THE BOLIVIANS, THE CRISIS RESULTS FROM AN IMPERFECT MECHANISM FOR ADJUSTING PRICES WITHIN THE COUNCIL. TO RECTIFY THIS PROBLEM, THE BOLIVIANS PROPOSED THAT THE COUNCIL ADOPT AN AUTOMATIC SYSTEM OF INDEXING ADJUSTMENTS TO THE ITC PRICE RANGES, WHEREBY THE FOLLR AND CEILING PRICES WOULD BE INDEXED TO SMELTING CHARGES IN THE U.S., U.K. AND GERMANY. THE BOLIVIANS EXPLAINED THAT THE SMELTERS CURRENTLY USE AN INDEXATION SYSTEM TO DETERMINE SMELTING CHARGES AND THAT THIS SYSTEM IS EQUALLY APPROPRIATE TO DETERMINING TIN
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METAL PRICES. THEY SUBMITTED A DETAILED STUDY SUPPORTING THEIR POSITION WHICH INDICATES THAT, IF THEIR FORMULA WERE ADOPTED, THE EXISTING FLOOR AND CEILING PRICES WOULD BE ADJUSTED UPWARDS TO M$1382/1702 PER PIKUL.

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6. THE BOLIVIANS INDICATED THAT BOLIVIA WOULD PROBABLY RATIFY THE AGREEMENT IF THE COUNCIL WOULD ADOPT THEIR INDEXATION SCHEME. THE BOLIVIANS MADE NO REFERENCE TO EITHER MANDATORY CONSUMER CONTRIBUTIONS OR REVISION OF THE COUNCIL'S VOTING SYSTEM.

7. ALL OTHER PRODUCERS SUPPORTED THE BOLIVIAN INDEXATION PROPOSAL, ALTHOUGH SOME SUGGESTED THAT THE PROPOSAL NEEDED MODIFICATION TO IMPROVE ITS PROCEDUAL MECHANISMS. ITC CHAIRMAN LAI, WITHOUT SPECIFIC REFERENCE TO THE LIMITED OFFICIAL USE

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BOLIVIAN PROPOSAL, COMMENTED THAT ADJUSTMENT OF THE FLOOR AND CEILING PRICES SHOULD BE "SYSTEMITIZED" AND SUBJECT TO SPECIFIC PERIODIC REVIEW (E.G. EVERY SIX MONTHS) IN ORDER TO PUT AN END TO CONTINUAL CONFRONTATION BETWEEN PRODUCERS AND CONSUMERS OVER PRICES.

8. IN THE ENSUING CONSUMER CAUCUS DISCUSSION OF THE BOLIVIAN PROPOSAL, ALL CONSUMERS, EXCEPTING THE NETHERLANDS, REJECTED INDEXATION. HOWEVER, REALIZING THAT AN OVERLY NEGATIVE CONSUMER POSITION COULD HAVE A NEGATIVE EFFECT ON THE MALAYSIAN MISSION, CONSUMERS AGREED THAT THEY WOULD DOWN-PLAY THEIR OBJECTIONS TO INDEXATION IN DISCUSSIONS WITH PRODUCERS. ACCORDINGLY, CONSUMER CHAIRMAN LEGOUX IN THE FOLLOWING PLENARY SESSION ADVISED PRODUCERS THAT WHILE "MOST IF NOT ALL CONSUMERS HAD SERIOUS RESERVATIONS CONCERNING INDEXATION, THE BOLIVIAN PROPOSAL WOULD BE TAKEN UNDER ADVISEMENT PENDING THE NEXT MEETING OF THE WORKING PARTY."

9. IN THE FINAL MEETING, THE WORKING PARTY AGREED THAT IT SHOULD MEET AGAIN IN PREPARATION FOR THE MARCH COUNCIL MEETING AND AGREED TO DEFER THE COUNCIL MEETING TO MARCH 2 SO THAT THE WP COULD MEET ON FEBRUARY 28 AND MARCH 1. THIS WILL ALLOW CONSUMERS TO CONSULT GOVERNMENTS ON THE INDEXATION SCHEME, BUT OF EQUAL IMPORTANCE, WILL ALLOW TIME FOR BOTH PRODUCERS AND CONSUMERS TO

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ASSESS THE RESULTS OF THE MALAYSIAN MISSION.

10. COMMENT: THE WORKING PARTY DELIBERATIONS WERE VERY MUCH INFLUENCED BY THE PENDING VISIT TO BOLIVIA OF MALAYSIAN PRIMARY RESOURCES MINISTER, MUSA HITAM. EXCEPTING BOLIVIA, THE NETHERLANDS, AND PERHAPS AUSTRALIA, MOST DELEGATIONS PREFERRED TO AWAIT THE RESULTS OF THAT MISSION BEFORE HAVING THE WORKING PARTY MAKE A RECOMMENDATION TO THE COUNCIL.

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11. CONCERNING BOLIVIA'S POSITION, THE CONSENSUS WAS THAT SECURING BOLIVIA'S RATIFICATION BOILED DOWN TO ONE OF PRICE RANGE ALONE. WHILE BOLIVIA FORMALLY PRESENTED ITS INDEXATION PROPOSAL TO THE WP, IN HIS FINAL STATEMENT, THE BOLIVIAN SPOKESMAN (MIRANDA) APPEARED TO LEAVE THE DOOR OPEN FOR SOME OTHER APPROACH TO THE PRICE QUESTION, E.G. A ONE-TIME PRICE ADJUSTMENT OF SIGNIFICANT PROPORTIONS.

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